

**OPINION
46-158**

October 14, 1946 (OPINION)

INTOXICATING LIQUOR

RE: Defining Pauper

I am in receipt of your letter of September 7, 1946, in which you state that in your county there are several persons receiving old age assistance and the question has arisen as to whether a person so receiving old age assistance would be a pauper under the provisions of Section 5-0112 of the North Dakota Revised Code relative to alcoholic beverages. The section referred to provides:

Every person who sells or gives to any person, knowing him to be a pauper or inmate of any poorhouse or almshouse, any alcoholic beverage, without authority from the superintendent or physician of such poorhouse or almshouse, shall be punished by a fine of twenty-five dollars."

The question presented has been given a great deal of consideration by this office and is not one entirely free from doubt. The Executive Director of the State Public Welfare Board was requested and has given his department's opinion on the matter which has been taken into consideration in the preparation of this opinion.

The term "pauper" is used in two distinct senses. In the one case it is synonymous with the term "poor person" as understood in the poor law, meaning one destitute and a proper subject for public aid, while in the other and more technical sense it means one who is actually receiving public aid, one who is eating the public bread. 41 Am. Jur. 683. "Pauper" means one so poor that he must be supported at the public expense. In re Barnes, 180 A. 718.

It is the opinion of this office that in passing the Old Age Assistance Act the legislature did not intend the same to be a poor relief act and did not intend that the people receiving such assistance should be classified as paupers. It should be noted that the statute does not provide that in order to qualify for old age assistance, applicants must be without financial resources. This is contained in section 50-0705 of the North Dakota Revised Code which provides among other things, that applicants may possess and retain a homestead. It is possible that some homesteads may be of considerable value and the possession of which would not permit a classification of pauper to such owners.

It is our belief from the section indicated above that the legislature did not intend this to be a poor relief law and did not intend that people receiving old age assistance should be classified as paupers under the laws of the State of North Dakota.

NELS G. JOHNSON

Attorney General